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BRANDENBURG, WILLIAM A				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/676,369

Applicant(s)

AGARWAL ET AL.

Examiner

WILLIAM A. BRANDENBURG

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
4a) Of the above claim(s) 1-8 and 25-32 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 9-24 and 33-48 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 01 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 05/15/06, 06/07/06, 05/10/07
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. The following is a non-final, first action on the merits in response to application filed on 10/01/2003. Claims 1-48 are pending.

Election/Restrictions

2. Applicant's election without traverse of Group II corresponding to claims 9-24 and 33-48 in the reply filed on 04/23/08 is acknowledged.

Information Disclosure Statement

3. The information disclosure statements (IDS) submitted on 05/15/2006, 06/07/2006 and 05/10/2007 were filed. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Specification

4. The abstract of the disclosure is objected to because it is longer than the formalities allow. Correction is required.
See MPEP § 608.01(b).

Claim Objections

5. Claim 13 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 13 references dependency from claim 5. However, claim 13 simply recites the identical language as in claim 5 and thus fails to further limit the previous claim. For the purposes of examination, the Examiner is interpreting the dependency from claim 9 instead of claim 5.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 11-12, 15-16, 19-20, 23-24, 35-36, 39-40, 43-44 and 47-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and

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distinctly claim the subject matter which applicant regards as the invention.

a. Claims 11 and 12 recite "determining a score", but claim 9 recites "determining the score". It is unclear to the Examiner whether this is the same score or a different score. For the purposes of examination, the Examiner is interpreting "a score" to be "the score".

b. Claims 15 and 16 reference dependency from claim 13 and recite "the act of determining a score". However, this claim language lacks antecedent basis and is therefore rejected under 35 U.S.C. 112, second paragraph as per MPEP 2173.05(e). For the purposes of examination, the Examiner is interpreting claims 15 and 16 to be dependent from claim 9 instead of claim 13.

Using that interpretation, claims 15 and 16 recite "determining a score", but claim 9 recites "determining the score". It is unclear to the Examiner whether this is the same score or a different score. For the purposes of examination, the Examiner is interpreting "a score" to be "the score".

c. Claims 19 and 20 recite "determining a score", but claim 17 recites "determining the score". It is unclear to the Examiner whether this is the same score or a different score. For the purposes of examination, the Examiner is interpreting "a score" to be "the score".

d. Claims 23 and 24 reference dependency from claim 21 and recite "the act of determining a score". However, this claim language lacks antecedent basis and is therefore rejected under 35 U.S.C. 112, second paragraph as per MPEP 2173.05(e). For the purposes of examination, the Examiner is interpreting claims 23 and 24 to be dependent from claim 17 instead of claim 21.

Using that interpretation, claims 23 and 24 recite "determining a score", but claim 17 recites "determining the score". It is unclear to the Examiner whether this is the same score or a different score. For the purposes of examination, the Examiner is interpreting "a score" to be "the score".

e. Claims 35 and 36 recite "means for determining a score", but claim 33 recites "means for determining the score". It is unclear to the Examiner whether this is the same score or a different score. For the purposes of examination, the Examiner is interpreting "a score" to be "the score".

f. Claims 39 and 40 reference dependency from claim 37 and recite "means for determining a score". However, this claim language lacks antecedent basis and is therefore rejected under 35 U.S.C. 112, second paragraph as per MPEP 2173.05(e). For the purposes of examination, the Examiner is interpreting claims 39 and 40 to be dependent from claim 33 instead of claim 37.

Using that interpretation, claims 39 and 40 recite "means for determining a score", but claim 33 recites "means for determining the score". It is unclear to the Examiner whether this is the same score or a different score. For the purposes of examination, the Examiner is interpreting "a score" to be "the score".

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g. Claims 43 and 44 recite "means for determining a score", but claim 41 recites "means for determining the score". It is unclear to the Examiner whether this is the same score or a different score. For the purposes of examination, the Examiner is interpreting "a score" to be "the score".

h. Claims 47 and 48 reference dependency from claim 45 and recite "means for determining a score". However, this claim language lacks antecedent basis and is therefore rejected under 35 U.S.C. 112, second paragraph as per MPEP 2173.05(e). For the purposes of examination, the Examiner is interpreting claims 47 and 48 to be dependent from claim 41 instead of claim 45.

Using that interpretation, claims 47 and 48 recite "means for determining a score", but claim 41 recites "means for determining the score". It is unclear to the Examiner whether this is the same score or a different score. For the purposes of examination, the Examiner is interpreting "a score" to be "the score".

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 9-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 9 and 17, the language in the body of the claims recites a method, however the claimed method steps are not tied to another statutory category and are thus rejected under 35 U.S.C. 101.

As the PTO notes, "[t]he Supreme Court has recognized only two instances in which such a method may qualify as a section 101 process: when the process 'either [1] was tied to a particular apparatus or [2] operated to change materials to a 'different state or thing.'" See PTO Supp. Br. 4 (quoting *Flook*, 437 U.S. at 588 n.9). In *Diehr*, the Supreme Court confirmed that a process claim reciting an algorithm could state statutory subject matter if it: (1) is tied to a machine or (2) creates or involves a composition of matter or manufacture. ¹² 450 U.S. at 184.

Claims 10-16 and 18-24 are dependent from claims 9 and 17, respectively, and do not resolve the deficiencies set forth

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above. Therefore, claims 10-16 and 18-24 are also rejected for being directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 9-16, 19-20, 23-24, 33-40, 43-44 and 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaser et al. (US 6,757,661 B1) (hereinafter Blaser).**
9. As per claim 9, Blaser discloses a method for determining a score of an ad, the method comprising:
- a) accepting local time of interest information associated with a request (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements).
- Blaser does not explicitly disclose

b) determining whether the ad has local time of interest price information corresponding to the local time of interest information accepted; and

c) if it is determined that the ad has local time of interest price information corresponding to the local time of interest information accepted, then determining the score using at least the local time of interest price information.

However, Blaser teaches examining ad performance in similar demographics (column 14, lines 15-20) and comparing performance records with ad targeting criterion (column 13, lines 9-16). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is well-known in the art that advertisers determine pricing criterion and bidding schemes based on

performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI).

10. As per claim 10, Blaser discloses the method of claim 9 wherein

the local time of interest information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

11. As per claim 11, Blaser discloses the method of claim 9 wherein

the act of determining a score further uses at least ad performance information (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

12. As per claim 12, Blaser discloses the method of claim 9 wherein

the act of determining a score further uses at least local time of interest ad performance information (column 10, lines 12-31, Advertisement table includes preferred times of day to display advertisement).

13. As per claim 13, Blaser discloses the method of claim 5 wherein

the local time of interest information is end user local time information (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements.

14. As per claim 14, Blaser discloses the method of claim 13 wherein

the end user local time information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

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15. As per claim 15, Blaser discloses the method of claim 13 wherein

the act of determining a score further uses at least ad performance information (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

16. As per claim 16, Blaser discloses the method of claim 13 wherein

the act of determining a score further uses at least end user local time ad performance information (column 10, lines 12-31, Advertisement table includes preferred times of day to display advertisement).

17. As per claim 19, Blaser discloses the method of claim 17.

Blaser does not explicitly disclose wherein

the act of determining a score further uses at least ad price information.

However, Blaser teaches determining a score using ad performance information (column 13, lines 9-16). In addition,

Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is well-known in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI).

18. As per claim 20, Blaser discloses the method of claim 17.

Blaser does not explicitly disclose wherein
the act of determining a score further uses at least local time of interest ad price information.

However, Blaser teaches determining a score using local time of interest performance information (column 10, lines 12-31). In addition, Blaser teaches a direct correlation between ad

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performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is well-known in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI).

19. As per claim 23, Blaser discloses the method of claim 21.

Blaser does not explicitly disclose wherein

the act of determining a score further uses at least ad price information.

However, Blaser teaches determining a score using ad performance information (column 13, lines 9-16). In addition,

Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is well-known in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI).

20. As per claim 24, Blaser discloses the method of claim 21.

Blaser does not explicitly disclose wherein
the act of determining a score further uses at least end user local time ad price information.

However, Blaser teaches determining a score using end user local time performance information (column 10, lines 12-31). In addition, Blaser teaches a direct correlation between ad

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performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is well-known in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI).

21. As per claim 33, Blaser discloses an apparatus for determining a score of an ad, the apparatus comprising:

a) an input ***for accepting local time of interest information associated with a request*** (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements).

Blaser does not explicitly disclose

b) means for determining whether the ad has local time of interest price information corresponding to the local time of interest information accepted; and

c) means for determining the score using at least the local time of interest price information if it is determined that the ad has local time of interest price information corresponding to the local time of interest information accepted.

However, Blaser teaches examining ad performance in similar demographics (column 14, lines 15-20) and comparing performance records with ad targeting criterion (column 13, lines 9-16). In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is well-known in the art that advertisers determine pricing criterion and bidding schemes based on

performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI).

22. As per claim 34, Blaser disclose the apparatus of claim 33 wherein

the local time of interest information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

23. As per claim 35, Blaser discloses the apparatus of claim 33 wherein

the means for determining a score further use at least ad performance information (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

24. As per claim 36, Blaser discloses the apparatus of claim 33 wherein

the means for determining a score further use at least local time of interest ad performance information (column 10, lines 12-31, Advertisement table includes preferred times of day to display advertisement).

25. As per claim 37, Blaser discloses the apparatus of claim 33 wherein

the local time of interest information is end user local time information (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements).

26. As per claim 38, Blaser discloses the apparatus of claim 37 wherein

the end user local time information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

27. As per claim 39, Blaser discloses the apparatus of claim 37 wherein

the means for determining a score further use at least ad performance information (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

28. As per claim 40, Blaser discloses the apparatus of claim 37 wherein

the means for determining a score further use at least end user local time ad performance information (column 10, lines 12-31, Advertisement table includes preferred times of day to display advertisement).

29. As per claim 43, Blaser discloses the apparatus of claim 41.

Blaser does not explicitly disclose wherein

the means for determining a score further use at least ad price information.

However, Blaser teaches determining a score using ad performance information (column 13, lines 9-16). In addition,

Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is well-known in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI).

30. As per claim 44, Blaser discloses the apparatus of claim 41.

Blaser does not explicitly disclose wherein
the means for determining a score further use at least
local time of interest ad price information.

However, Blaser teaches determining a score using local time of interest performance information (column 10, lines 12-31).
In addition, Blaser teaches a direct correlation between ad

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performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is well-known in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI).

31. As per claim 47, Blaser discloses the apparatus of claim 45.

Blaser does not explicitly disclose wherein

the means for determining a score further use at least ad price information.

However, Blaser teaches determining a score using ad performance information (column 13, lines 9-16). In addition,

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Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is well-known in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI).

32. As per claim 48, Blaser discloses the apparatus of claim 45.

Blaser does not explicitly disclose wherein

the means for determining a score further use at least end user local time ad price information.

However, Blaser teaches determining a score using end user local time performance information (column 10, lines 12-31).

In addition, Blaser teaches a direct correlation between ad performance and advertiser pricing criterion (column 3, lines 14-30).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Blaser to include price information in addition to the performance information already disclosed. As per the teachings of Blaser, there is a direct correlation between ad performance and advertiser pricing criterion and it is well-known in the art that advertisers determine pricing criterion and bidding schemes based on performance of the ads. This would allow the advertiser to ensure they are getting the best Return on Investment (ROI).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United

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States and was published under Article 21(2) of such treaty in the English language.

33. Claims 17-18, 21-22, 41-42 and 45-46 are rejected under 35

**U.S.C. 102(e) as being anticipated by Blaser et al. (US
6,757,661 B1) (hereinafter Blaser).**

34. As per claim 17, Blaser discloses a method for determining a score of an ad, the method comprising:

a) accepting local time of interest information associated with a request (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements) ;

b) determining whether the ad has local time of interest performance information corresponding to the local time of interest information accepted (Fig. 8, "815", see also column 14, lines 15-20, ad performance examined to determine if ad exhibits a strong response from other users in similar demographic) ; and

c) if it is determined that the ad has local time of interest performance information corresponding to the local time of interest information accepted, then determining the score using at least the local time of interest performance

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information (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

35. As per claim 18, Blaser discloses the method of claim 17 wherein

the local time of interest information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range, (f) at least one local day-of-week range (column 6, lines 56-62, first and last days to send), and (g) at least one local season.

36. As per claim 21, Blaser discloses the method of claim 17 wherein

the local time of interest information is end user local time information (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements).

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37. As per claim 22, Blaser discloses the method of claim 21 wherein

the end user local time information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range, (f) at least one local day-of-week range (column 6, lines 56-62, first and last days to send), and (g) at least one local season.

38. As per claim 41, Blaser discloses an apparatus for determining a score of an ad, the apparatus comprising:

a) an input ***for accepting local time of interest information associated with a request*** (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements);

b) means for determining whether the ad has local time of interest performance information corresponding to the local time of interest information accepted (column 14, lines 15-20, ad performance examined to determine if ad exhibits a strong response from other users in similar demographic, see also

column 6, lines 20-23, OSP server uses client information to determine ads to be sent); and

c) means for determining the score using at least the local time of interest performance information if it is determined that the ad has local time of interest performance information corresponding to the local time of interest information accepted (column 13, lines 9-16, OSP compares performance records with target criteria in Ad Performance table).

39. As per claim 42, Blaser discloses the apparatus of claim 41 wherein

the local time of interest information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

40. As per claim 45, Blaser discloses the apparatus of claim 41 wherein

the local time of interest information is end user local time information (column 3, lines 39-47, ad server receives information about user, see also column 6, lines 29-62, information from client received and data sent according to scheduling requirements).

41. As per claim 46, Blaser discloses the apparatus of claim 45 wherein

the end user local time information includes at least one of (a) at least one local time-of-day (column 6, lines 56-62, time of day to send), (b) at least one local time-of-day range, (c) at least one local date, (d) at least one local day-of-week, (e) at least one local date range (column 6, lines 56-62, first and last days to send), (f) at least one local day-of-week range, and (g) at least one local season.

Conclusion

42. Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully

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requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

43. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Beyda et al. (US 2004/0225566 A1)

b. Weitzman et al. (US 2002/0099605 A1)

c. Dunham et al. (US 2003/0216930 A1)

44. Please note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *e.g. In re Collier*, 158 USPQ 266, 267 (CCPA 1968) (where the court interpreted the claimed phrase "a connector member for engaging shield means" and held that the shield means was not a positive element of the claim since "[t]here is no positive inclusion of 'shield means' in what is apparently intended to

be a claim to structure consisting of a combination of elements."

As a courtesy, the Examiner has bolded and italicized the claim language consider as intended use.

45. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM A. BRANDENBURG whose telephone number is (571)270-5488. The examiner can normally be reached on Monday-Thursday 6:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on 571-272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the

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Electronic Business Center (EBC) at 866-217-9197 (toll-free).

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

W.B.

/Bradley B Bayat/
Supervisory Patent Examiner, Art Unit 4115